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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT GRANTED BY )  
SKAGIT COUNTY TO ROBERT POWERS )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )  
Appellants, )  
v. )  
SKAGIT COUNTY and ROBERT POWERS, )  
Respondents. )

SHB No. 238

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

A formal hearing was held before the Shorelines Hearings Board,  
W. A. Gissberg presiding, Chris Smith, Robert F. Hintz, Robert E. Beaty  
and William A. Johnson on February 9, 1977 in Mount Vernon, Washington.

Appellants Department of Ecology and Attorney General were  
represented by Robert E. Mack, Assistant Attorney General; respondent  
Skagit County was represented by William E. Nielsen, Deputy Prosecuting  
Attorney; respondent Powers was represented by his attorney, Charles

1 R. Twede.

2 Having heard the evidence, having examined the exhibits, and having  
3 considered the contentions of the parties, the Shorelines Hearings Board  
4 makes these

5 FINDINGS OF FACT

6 I

7 The proposed development called "Camelot on the Skagit" is the  
8 preliminary platting of approximately 15 acres into 15 one-acre lots of  
9 property located just east of the Town of Hamilton and lying north of  
10 the Cape Horn Road and the Skagit River, a shoreline of state-wide  
11 significance. The plat, being separated by an existing public road,  
12 is not adjacent to the river. Each lot is to be served by individual  
13 well and sewage disposal systems. There are no works, structures or  
14 improvements proposed in the subject development. The instant property  
15 is zoned Residential.

16 To the immediate west of the site is an existing platted residential  
17 development known as Shangri-La. Approval for that development, including  
18 a flood control zone permit, was secured from the appropriate governmental  
19 authorities in 1968.

20 II

21 In September, 1969 the Washington State Department of Water Resources  
22 (now the Department of Ecology) issued a conditional flood control zone  
23 permit authorizing Camelot Farms, Inc.<sup>1</sup> to construct and maintain a  
24

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25 1. That corporation has been dissolved and its assets, including  
26 the subject property, distributed to respondent-permittee.

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1 34-lot residential plat of "Camelot on the Skagit, Division 1" on a part  
2 of the subject property. The proposed project was to be constructed above  
3 the 25-year frequency flood as required by the then prevailing rules of  
4 that governmental agency. The permit has no expiration date.

5 III

6 In October, 1969 Skagit County approved the preliminary plat of  
7 "Camelot on the Skagit, Division 1" for 34 residential lots, each  
8 approximately 10,000 square feet in area, subject to certain conditions.<sup>2</sup>  
9 In January, 1970 the Skagit County Planning Commission recommended final  
10 plat approval subject to fulfillment of certain conditions.<sup>3</sup> Neither the  
11 road or water system, nor bonds providing for such, were provided and the  
12 final plat was never filed for record with the County Auditor.

3  
14 2. The conditions were that:

15 a) A comprehensive drainage plan be submitted indicating  
16 the method of collecting water within the plat and disposing of  
drainage water beyond the plat;

17 b) Consideration should be given to the dedication of a  
18 60 foot right-of-way on the Cape Horn Road;

19 c) Restrictive covenants be submitted with the final plat  
and covenants to include conditions of Flood Control Permit No. 421-7  
20 issued by the State Department of Water Resources;

21 d) The well and distribution system be constructed or bonded  
for and approved by the State Health Department prior to final plat  
22 approval and;

23 e) When the future platted areas are developed, the area  
must be graded to remove the existing low areas to provide adequate  
24 site drainage.

25 3. The conditions were that:

26 a) Certificate of title be provided and;

27 b) Bonds be provided for roads and water system if developer  
did not install them.

1 In May, 1970 the Skagit County Planning Commission recommended  
2 approval of the preliminary plat application for "Camelot on the Skagit,  
3 Division 2" (part of which land is the subject of this proceeding) subject  
4 to certain conditions.<sup>4</sup> Division 2 consisted of 29 residential lots, each  
5 approximately 10,000 square feet in area, including a proposed new road  
6 located north of Division 1. There was no final plat approval for  
7 Division 2.

8 IV

9 More than six years later, on August 9, 1976, a preliminary plat  
10 for the instant project, together with a shoreline permit application,  
11 were considered by the Skagit County Planning Commission. The plat and  
12 permit application were recommended for approval subject to meeting  
13 conditions relating to location of utilities within the final plat.

14 On August 17, 1976 the Skagit County Commissioners approved the plat  
15 and shoreline permit application. A permit for the proposed development  
16 was issued on August 27, 1976 from which arose the instant appeals. The  
17 County and the permittee regard the 1969 flood control zone permit held by  
18 Camelot Farms, Inc. for a part of the same property to be valid for the  
19 proposed project.

20 V

21 Division 1 of the 1970 final plat is smaller in area than the  
22 proposed project. Division 2 of the 1970 preliminary plat is also  
23

24 4. The conditions were that the water distribution system was to  
25 be installed or bonded prior to final plat approval and that the roads  
26 were to be built to county standards and water lines installed prior  
to final paving.

27 FINDINGS OF FACT,  
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1 smaller in area than the proposed project. Taken together, the foregoing  
2 Divisions have boundaries and areas nearly identical to the proposed  
3 project.

4 The instant project (15 one acre lots) would have fewer lots than the  
5 previous plats (63 lots total in Divisions 1 and 2). The instant project  
6 does not propose the construction of any works, structures or improvements.  
7 The previous plats, Divisions 1 and 2 approved by the Planning Commission  
8 in 1970, would have allowed the installation of a road and a community  
9 water well.

## 10 VI

11 The Skagit County Master Program was adopted by the County in June,  
12 1976 and approved by the Department of Ecology in the fall of 1976, after  
3 the issuance of the instant permit. The use classification of the site  
14 is designated "Rural" both in the draft and final master programs.

15 Section 7.13(2)(B)(4)(a) provides:

16 Floodway - Residential structures and primary facilities of a  
17 permanent nature as part of development subject to this  
18 program shall be located out of the officially mapped flood-  
way of the Skagit River . . . .

## 19 VII

20 A County Commissioner, who participated in the permit proceedings  
21 and decision, is an agent of the Equitable Life Assurance Society. The  
22 Commissioner has a financial interest in that company in the nature of  
23 cash value of insurance policies on his life and an investment plan. The  
24 Society also is his creditor for a sum less than \$5,000. The foregoing  
25 financial interests existed at all relevant times during the pendency of  
3 and decision on the instant shoreline permit application.

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VIII

The Equitable Life Assurance Society held a mortgage interest on the subject property at all relevant times during the pendency of and decision on the instant shoreline permit application. There is no evidence that the Commissioner, respondent Powers, or any other person was aware of the Society's interest in the subject property. In January, 1977 respondent Powers paid the amount remaining on the mortgage. The financial interest held by the county commissioner was revealed for the first time at this appeal by appellant's attorney who had examined the records of the Public Disclosure Commission.

IX

From the preponderance of the evidence presented at the hearing, we find that the proposed development lies above the 25-year frequency flood level but within the 100-year frequency floodway as established by the United States Army Corps of Engineers. It is undisputed that during various recent floods, the water therefrom covered a substantial portion, if not all, of the subject property.

X

The purpose of the project is to authorize the subdivision of land into residential lots upon which structures intended for permanent human habitation are to be constructed.

XI

Filling of the site to bring it out of the 100-year frequency floodway would decrease the channel area for water flow and hence, cause an increase in the velocity of water flow for a given volume of water over the same time duration. Such increase in water velocity could affect the Town of Hamilton lying about one-half mile to the west of

1 the site.

2 XII

3 If the Department of Ecology were now to consider an application for  
4 a flood control zone permit at the site applying the 1969 rules, it would  
5 have granted the permit. However, because the 25-year flood frequency  
6 standard was changed to a 100-year flood frequency in chapter 508-60 WAC  
7 after 1969, the Department would not now grant such a permit.

8 XIII

9 Any Conclusion of Law which should be deemed a Finding of Fact is  
10 hereby adopted as such.

11 From these Findings the Shorelines Hearings Board comes to these

12 CONCLUSIONS OF LAW

13 I

14 The Board has jurisdiction over the persons and subject matter of  
15 this proceeding. We do not decide whether the instant project is a  
16 substantial development. It is sufficient for our review that there has  
17 been a permit issued, which permit has been appealed. RCW 90.58.180(2).

18 II

19 The subject permit is measured for consistency with the policy of  
20 RCW 90.58.020, the Department of Ecology guidelines, and the Skagit  
21 County Master Program so far as it can be ascertained at the time of  
22 permit issuance.

23 III

24 The reasoning in the Skagit River League, et al. v. Skagit County  
25 and Valleys West, SHB No. 228, applies here. Because the purpose of the  
26 plat is to provide lots for permanent residential structures, and

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1 such structures in a 100-year frequency floodway are prohibited by  
2 regulation (WAC 508-60-040), it would be inconsistent with RCW 90.58.020  
3 to approve a substantial development permit which would allow such a  
4 prohibited development.<sup>5</sup>

5 IV

6 RCW 58.17.140 states that local ordinances may provide for the  
7 expiration of approval given to any preliminary plat. Skagit County  
8 ordinance provides for the expiration of approval after two years  
9 unless such approval is extended for two more years.

10 Although extensions were granted, approval for the 1970 preliminary  
11 plats (Divisions 1 and 2) on the subject property has expired and the  
12 plats have been abandoned.

13 V

14 Certain classes and types of plats are exempted by the Shoreline  
15 Management Act. Prior to the 1976 amendments to the Act, RCW 90.58.140(9)  
16 read:

17 No permit shall be required for any development  
18 on shorelines of the state included within a preliminary  
19 or final plat approved by the applicable state agency or  
20 local government prior to April 1, 1971 if:

21 (a) The final plat was approved after April 13, 1951,  
22 or the preliminary plat was approved after April 30,  
23 1969, or

24 (b) Sales of lots to purchasers with reference to the  
25 plat, or substantial development incident to platting or  
26 required by the plat, occurred prior to April 1, 1971,  
27 and

(c) The development to be made without a permit  
meets all requirements of the applicable state agency or  
local government, other than requirements imposed

25 5. RCW 58.17.120 requires the prior written approval of the  
26 department of ecology before any plat is approved by local government  
27 for any land situated in a flood control zone.

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1 pursuant to this chapter, and

2 (d) The development does not involve construction of  
3 buildings, or involves construction on wetlands of  
4 buildings to serve only as community social or recrea-  
5 tional facilities for the use of owners of platted lots  
6 and the buildings do not exceed a height of thirty-five  
7 feet above average grade level, and

8 (e) The development is completed within two years  
9 after the effective date of this chapter.

10 If any ambiguity existed in the foregoing provision as to whether  
11 subsection (a) was to be read separately, or in conjunction with  
12 subsections (c), (d) and (e), the 1976 legislative amendments made it  
13 quite clear that subsection (a) was to be read separately:

14 No permit shall be required for any development  
15 on shorelines of the state included within a preliminary  
16 or final plat approved by the applicable state agency or  
17 local government prior to April 1, 1971, if:

18 (a) The final plat was approved after April 13, 1961,  
19 or the preliminary plat was approved after April 30,  
20 1969; or

21 (b) (i) Sale of lots to purchasers with reference to  
22 the plat, or substantial development incident to platting  
23 or required by the plat, occurred prior to April 1, 1971,  
24 and

25 (ii) The development to be made without a permit  
26 meets all requirements of the applicable state agency or  
27 local government, other than requirements imposed pur-  
suant to this chapter, and

(iii) The development does not involve construction  
of buildings, or involves construction on wetlands of  
buildings to serve only as community social or recreational  
facilities for the use of owners of platted lots and the  
buildings do not exceed a height of thirty-five feet above  
average grade level, and

(iv) The development is completed within two years  
after the effective date of this chapter. (emphasis added)

Respondent permittee claims a plat exemption under the foregoing amend-  
provision. The claim is, however, inapplicable because the conditions  
of the 1970 preliminary plats (Divisions 1 and 2) were never fulfilled  
within the time requirements set by Skagit County ordinance for plat  
approval pursuant to RCW 58.17.140 and the plat approvals have expired;

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1 the earlier plats and the instant plat are different.

2 VI

3 Respondent-permittee claims a vested right to proceed with the  
4 instant project because of the flood control zone permit issued in 1969.  
5 The claim must be denied: the flood control zone permit related to a  
6 different plat than the plat on this appeal and, in any event, the  
7 issuance of the 1969 flood control zone permit, whether vested or not,  
8 does not require the issuance of the instant shoreline permit.

9 VII

10 Restrictions on the free and unhampered use of property imposed by  
11 the Shoreline Management Act compel the highest public confidence  
12 in governmental process bringing about such action. Members of bodies  
13 charged with rendering decisions under the Act "must, as far as  
14 practicable, be open minded, objective, impartial, free of entangling  
15 influences and capable of hearing the weak voices as well as the strong  
16 . . . . The doctrine is applicable to show an interest which might  
17 have substantially influenced a member of the commission even if that  
18 interest did not actually affect him." Narrowsview Ass'n v. Tacoma,  
19 84 Wn.2d 416, 420 (1974). Appellants have failed to show the "interest  
20 which might have substantially influenced" the County Commissioner.  
21 There is no evidence of any personal benefit to the Commissioner.  
22 While there is evidence of a mortgage on the property held by the  
23 insurance company, there is no evidence presented showing how the  
24 existence of such mortgage, of which the Commissioner was unaware,  
25 might have influenced his decision. To presume an influencing interest  
26 FINDINGS OF FACT,  
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1 from the mere existence of a mortgage, under the facts of this case,  
2 would not be a practicable application of the appearance of fairness  
3 doctrine. To rule otherwise would have the effect of either:  
4 (1) requiring a public official who is an insurance agent to publicly  
5 inquire, before participating in any permit proceedings, whether the  
6 permittee is indebted to the insurance company, or (2) foreclosing such  
7 official from public service.

#### 8 VIII

9 The shoreline permit issued to respondent Powers is inconsistent  
10 with the policy of RCW 90.58.020 and Section 7.13(2)(b)(4)(a) of  
11 the Skagit County Master Program and should be vacated.

#### 12 IX

13 Any Finding of Fact which should be deemed a Conclusion of Law  
14 is hereby adopted as such.

15 From these Conclusions the Shorelines Hearings Board enters this

#### 16 ORDER

17 The shoreline permit issued to respondent Powers by Skagit County  
18 is vacated.

1 DATED this 24<sup>th</sup> day of March, 1977.

2 SHORELINES HEARINGS BOARD

3 W. A. Gissberg  
4 W. A. GISSBERG, Member

5 Robert E. Beatty  
6 ROBERT E. BEATTY, Member

7 Robert F. Hintz  
8 ROBERT F. HINTZ, Member

9 William A. Johnson  
10 WILLIAM A. JOHNSON, Member

11 Chris Smith  
12 CHRIS SMITH, Member

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